

SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT is made effective as of this ____ day of _____, 2015, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (“City”); the Port Authority of the City of Bloomington, a public body politic and corporate organized under the laws of Minnesota (the “Authority”); and South Loop Investments, LLC, a Minnesota limited liability company, 340 Main Street, Suite 200, P.O. Box 3208, Park City, Utah 84060 (“South Loop Investments”). The Authority and South Loop Investments are collectively referred to herein as the “Applicants.”

RECITALS

The Applicants filed a development application for the City’s approval of a Preliminary Development Plan for a hotel, restaurant, retail building and parking structure (Case 8490B-15) (the “Preliminary Development Plan”), and a Final Development Plan for a five-story, 148-room hotel and a 326-space, four-level parking structure (Case 8490C-15) (the “Final Development Plan”) for the property located at 8100 26th Avenue South in the City of Bloomington, Minnesota, and legally described as set forth in **Exhibit A** which is attached hereto and

incorporated herein by reference (“Property”). The Preliminary Development Plan and the Final Development Plan are collectively referred to as the “Plans” herein.

The Property is comprised of four parcels. **Lot 1** is that portion of the Property where the above-described hotel is to be constructed pursuant to the approved Plans, and is owned in fee simple title by South Loop Investments.

Lot 2 is that portion of the Property where the restaurant is to be constructed pursuant to the approved Preliminary Development Plan and an anticipated future Final Development Plan, and is owned in fee simple title by South Loop Investments 2, LLC.

Lot 3 is that portion of the Property where a retail building is to be constructed pursuant to the approved Preliminary Development Plan and an anticipated future Final Development Plan, and is owned in fee simple title by the Authority. Ownership of Lot 3 will transfer to South Loop Investments or an affiliated or successor entity as set forth in that certain Purchase and Redevelopment Contract by and between the parties dated December 10, 2014.

Lot 4 is that portion of the Property where the parking ramp is to be constructed, and is owned in fee simple title by the Authority. Ownership of Lot 4 will transfer to South Loop Investments or an affiliated or successor entity as set forth in that certain Purchase and Redevelopment Contract by and between the parties dated December 10, 2014.

The development of the Property pursuant to the approved Preliminary Development Plans will be conducted in phases, with Lots 1 and 4 being developed first, pursuant to the approved Plans. Lots 2 and 3 will be developed at a later time, following subsequent applications for final development plans for those portions of the Property.

It is the intention of the parties that this Agreement be effective on Lots 1 and 4 for development pursuant to the Plans approved as set forth below. Development of Lots 2 and 3

will require future approvals and a separate similar agreement applicable to those parcels separate from this Agreement.

The City Council of the City of Bloomington, Minnesota, at its regular meeting of May 4, 2015, approved the Plans subject to, and contingent upon, the Applicant's satisfaction of certain conditions relating to the Property, and made subject to those conditions, as well as all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval).

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property. It is intended to address the parties' compliance with the conditions the City Council placed on its May 4, 2015, approval. This Agreement does not address other issues relating to public improvements, assessments, storm water charges, or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference, nor does it relate to or affect the terms and obligations of the parties set forth in that certain Easement and Maintenance Agreement executed by the City and South Loop Investments the parties on _____, 2015, or any other agreements between the parties.

NOW THEREFORE, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows:

1. Recitals. The foregoing recitals are correct and are incorporated herein.
2. Obligations of the Applicants.

(a) Compliance with Conditions of Approval. The Applicants agree that development of the Property shall be in strict conformance with all conditions set forth in the letter of transmittal dated May 5, 2015. These conditions are set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference.

(b) Conformance with Approved Plans. The Applicants agree that development of the Property shall also be in strict conformance with the Plans as approved on May 4, 2015, by the City Council, all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval and letter of transmittal), and all applicable state and federal laws. In the event that there is a conflict between the Plans as approved by the City Council and the regulatory terms of this Agreement, the more restrictive standard shall apply. It shall be the obligation of the Applicants to provide advance written notice to the City of any aspect of the development that varies to any degree from the Plans approved by the City Council on May 5, 2015. The Applicants also agree that any major or minor change to the Plans as approved by the City Council must be approved by the City as provided in City Code Section 21.501.03, subdivisions (c) and (d).

(c) Compliance with Zoning Regulations. The Applicants agree that any change to a use of the Property that is prohibited under the City's zoning regulations will require City Council approval of a revision of the zoning code and approval of a revision to the Plans.

3. Obligations of the City.

(a) Issuance of Permits. The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in the attached **Exhibit B**, and compliance with all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval or letter of transmittal). No permits will be issued until the Applicants have submitted all appropriate permit applications, which are subject to City review and approval.

4. Event of Default.

(a) The term “event of default” shall mean, whenever it is used in this Agreement (unless the context provides otherwise), any of the following events:

(i) The failure of either Applicant to perform the obligations set forth in paragraph 2 (“Obligations of the Applicants”) of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the respective Applicant of written notice of such default by the City.

(ii) The failure of the City to perform the obligations set forth in paragraph 3 (“Obligations of the City”) of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the City of written notice of such default by the respective Applicant.

5. Remedies of the City.

(a) Whenever any event of default of either Applicant occurs, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance and observance of this Agreement by the defaulting Applicant.

(b) A major change in the Plans by the Applicants shall require City Council approval in accordance with Bloomington City Code Section 21.501.03(c), and the City reserves the right to initiate such proceedings. In addition, the City reserves its right to initiate rezoning of the Property if the Applicants change the Property to a use prohibited in the approved zoning district.

6. Remedies of the Applicants.

Whenever any event of default by the City occurs, either Applicant may take whatever action at law or in equity may appear necessary or desirable to the respective Applicant to enforce performance or observance of this Agreement.

7. Notices and Demands.

(a) A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by registered or certified mail, or by nationally recognized overnight courier, postage pre-paid, return receipt requested, and addressed to the party at the addresses listed below with receipt thereof presumed on the third business day thereafter, if sent by registered or certified mail, or the next business day is sent by overnight courier. Either party may designate another address, or attorney for receipt of notices pursuant to this Agreement by designating in writing and forwarding such writing to the other party as provided in this section.

If to the City:

City of Bloomington
ATTN: Director of Community Development
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

If to South Loop Investments:

South Loop Investments, LLC
ATTN: David Peters, Chief Manager
340 Main Street, Suite 200, P.O. Box 3208
Park City, Utah 84060

If to the Port:

Bloomington Port Authority
ATTN: Administrator
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

8. Amendment/Additional Documents.

This Agreement may be amended, in writing, as the parties may mutually agree. The plans, standards, stipulations, and other information constituting the development plan and the conditions placed on the approval of the plans as detailed in **Exhibit B** may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.03. Once approved by the City Council, subsequent development plans and conditions shall become part of this Agreement and shall be fully binding upon the parties as if

set forth herein. All such additional documents affecting the development and use of this property shall be kept on file as a public record by the City of Bloomington, Director of Community Development.

9. Application of City Code Provisions, Rules, Regulations and Policies.

This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new City Code provisions, rules, regulations or policies that do not conflict with those in force and effect on the effective date of this Agreement, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development application on the basis of such existing or new City Code provisions, rules, regulations or policies. No rights shall be deemed to vest in the Applicant or any other person, under any site development agreement, except as expressly set forth therein.

10. Relationship of the Parties.

No partnership or joint venture is established between the parties hereto by or under this Agreement or any agreement referenced herein.

11. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present Applicants, Qualified Intermediary in a 1031 exchange, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Applicant which relate to such portions of the Property and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Agreement relating to the transferred portion of the Property.

12. Recording of Document.

This Agreement shall run with the Property and shall be recorded in the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, by South Loop Investments with proof thereof shown to the City prior to its issuance of any permits hereunder.

13. Governing Law.

The City and Applicant agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

14. Entire Agreement.

This Agreement and the Plans represent the entire Agreement between the Applicants and the City.

15. Severability.

If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby

declared the intention of the parties that they would have executed the remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.

16. Signatures/ Execution.

Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[left blank intentionally; signature pages follow]

Signature Page for the City of Bloomington

CITY OF BLOOMINGTON

DATED: _____

By _____
James D. Verbrugge
Its City Manager

Reviewed and approved by the City Attorney.

City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this ____ day of _____, 2015, by James D. Verbrugge, the City Manager of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the City of Bloomington.

Notary Public

Signature Page for the Port Authority

BLOOMINGTON PORT AUTHORITY

DATED: _____

By _____
Schane D. Rudlang
Its Administrator

Reviewed and approved by the Port General Counsel.

General Counsel

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this ____ day of _____, 2015, by Schane D. Rudlang, the Administrator of the Bloomington Port Authority, under the laws of the State of Minnesota, on behalf of the Bloomington Port Authority.

Notary Public

Signature Page for APPLICANT

SOUTH LOOP HOSPITALITY, LLC

DATED: _____

By _____
David Peters
Its Chief Manager

STATE OF UTAH)
) SS.
COUNTY OF SUMMIT)

This instrument was acknowledged before me this ____ day of _____, 2015, by David Peters, the Chief Manager of South Loop Hospitality, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This instrument was drafted by:
Legal Dept. – City of Bloomington
1800 W. Old Shakopee Rd.
Bloomington, MN 55431
(952) 563-8753

EXHIBIT A
TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1, Block 1, LINDAU LINK 2ND ADDITION, Hennepin County, Minnesota. (Hotel)

Lot 2, Block 1, LINDAU LINK 2ND ADDITION, Hennepin County, Minnesota.
(Restaurant)

Lot 3, Block 1, LINDAU LINK 2ND ADDITION, Hennepin County, Minnesota. (Retail)

Lot 4, Block 1, LINDAU LINK 2ND ADDITION, Hennepin County, Minnesota. (Parking
Ramp)

EXHIBIT B
TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

Conditions of approval for the Preliminary Development Plan for Alpha B, which includes a hotel, restaurant, retail building and parking structure (Case 8490B-15); and a Final Development Plan for a 5-story, 148 room hotel and a 326 space, four level parking structure (Case 8490C-15) subject to the following conditions being satisfied prior to Grading, Footing, and Foundation or Building Permits:

- 1) A site development agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
- 2) The Grading, Drainage, Utility, Erosion Control, Traffic Control, access, circulation and parking plans must be approved by the City Engineer.
- 3) Permits and agreements for construction and streetscape in Hennepin County right-of-way (24th Avenue S) must be obtained and copies submitted to the Engineering Division.
- 4) A stormwater maintenance plan must be signed by the property owner and filed with Hennepin County, with proof of recording submitted to the Engineering Division.
- 5) A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided since greater than one acre will be disturbed.
- 6) An Erosion Control Bond must be provided.
- 7) Sewer Availability Charges (SAC) must be satisfied.
- 8) A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from MPCA that this permit is not required must be submitted to the Engineering Division.
- 9) A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the Engineering Division.
- 10) An external grease interceptor must be provided for the restaurant and food preparation uses on the site. A Maintenance Schedule/Plan for the grease interceptor must be signed by the property owner and filed with the Utilities Division prior to issuance of a utility permit to connect with the sanitary sewer system.
- 11) Plans submitted for building permits must include documentation that construction will provide a Sound Transmission Class (STC) rating of at least 53 for the exterior wall and roof assemblies, STC rating of at least 38 for guest room windows and an STC rating of at least 30 for HVAC equipment and vents passing through guest room walls to the building exterior.
- 12) Execute Plaza easement and Maintenance agreement with the City.
- 13) A detailed plan for the design of the Public Plaza must be submitted for approval by the Community Development Director.
- 14) The applicant must provide plans showing turning radius movements for the appropriate emergency vehicle through the site, in both directions, to be approved by the Fire Marshall.
- 15) Sidewalks must be revised to meet City Code and South Loop standards.

- 16) A private common driveway/access/parking/utilities/stormwater management agreement must be recorded at Hennepin County and proof of filing provided to the Engineering Division.

And subject to the following conditions:

- 17) All construction stockpiling, staging, and parking must take place on-site and off adjacent public streets and public rights-of-way.
- 18) All loading and unloading must occur on site and off public streets.
- 19) Development must comply with the Minnesota State Accessibility Code.
- 20) Alterations to utilities must be at the developer's expense.
- 21) Structures and art elements need to be located outside of the easements.

And, while the use and improvements must comply with all applicable local, state and federal codes, the applicant should pay particular attention to the following Code requirements:

- 1) The property must be platted per Chapter 22 of the City Code and the approved final plat must be filed with Hennepin County prior to the issuance of footing and foundation or building permits (22.03(a)(2)).
- 2) Electronic utility as-builts, per City of Bloomington requirements, must be submitted to the Public Works Department prior to the issuance of the Certificate of Occupancy (17.79(a)).
- 3) A Tier 1 Transportation Demand Management (TDM) Plan must be submitted prior to the issuance of permits and approved by the City Engineer (21.301.09(b)(2)).
- 4) Utility permits will not be issued until sewer and water connection charges have been paid or petition for inclusion in an assessment district has been signed (11.04, 11.27).
- 5) Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, MN State Fire Code Sec. 508).
- 6) Unused water services must be properly abandoned (11.15).
- 7) Discharge of sanitary effluent containing fats, oil, grease, or wax in excess of 100mg/L is prohibited (11.31(6)(B)).
- 8) Building must be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
- 9) Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
- 10) Landscape plan must be approved by the Planning Manager and landscape surety be filed (Sec 19.52).
- 11) All rooftop equipment must be fully screened (Sec. 19.52.01).
- 12) Poured-in-place concrete curbs must be provided on the perimeter of parking lots and traffic islands (Sec 19.64).
- 13) All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
- 14) Recyclable materials must be separated and collected (Sec. 10.45).
- 15) Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).

- 16) Parking lot and site security lighting must satisfy the requirements of Section 21.301.07 of the City Code.
- 17) An Airport Zoning Permit must be approved by the Community Development Director for any crane or structure on site that exceeds 60 feet in height above existing grade (MSP Airport Zoning Ordinance Section VIII (A)).
- 18) Sign Design must be in conformance with the requirements of Chapter 19, Article X of the City Code.